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## CONTRACTING CONCEPT OF 'MEETING PLACE' IN ISLAMIC LAW: IS THERE A ROOM FOR ITS POSSIBLE IMPLEMENTATION IN INTERNET TRANSACTIONS?

by

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*This article examines whether it is plausible to apply the contracting norm of 'Meeting Place' in contracts being formed electronically without the presence of the contracting parties. It is aimed to critically engage in a balanced fashion between the traditional theoretical interpretation of the 'Meeting Place' and the practicalities involved from the use of technological means to form transactions in cyberspace. The Internet, in particular, has played a significant part in the development of commercial activities in many parts of the world. Hence, particular attention will be paid to discuss the appropriate implementation to the concept of 'Meeting Place' in light of transactions formed online via the Internet. Attempt will be made to define the concept and signify its objective in Islamic Law of Contract. Discussions will go further to question the possible application of the 'Meeting Place' concept in instantaneous and non-instantaneous mediums of communication.*

### KEYWORDS

*Majles al-Aqd, meeting place, Islamic Law of Contract, e-transactions, Internet, email*

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## 1. INTRODUCTION

Under Islamic law there must be mutual consent by both parties to enter into a binding and valid deal.<sup>1</sup> However, it is essential to note that the parties' consent in contract bears no legal force until it is unequivocally expressed. Therefore, a contract is only deemed to be valid when there is a communication between the parties' consent in the form of offer and acceptance. Yet, the question arises as to how long an offer can be held open. Should an acceptance be expressed as soon as an offer is made or, can it be delayed and accepted whenever the offeree wishes? Islamic law is distinct from other legal systems that it insists on the application of the concept of *Majles al-Aqd*, which will hereafter be referred to as the contract's 'meeting place'. Accordingly, unless it is otherwise agreed, for a contract to be validly formed the consent of the parties in the form of offer and acceptance must be communicated during the parties' 'meeting place'. The concept of 'meeting place' is paramount in Islamic commercial doctrine.

The essentiality of 'meeting place' in the Islamic legal system is to determine the length of time for an offer to remain legally valid for acceptance. Practically speaking, the offer and the acceptance can never be contemporaneously communicated. Thus, to enable the necessary correspondence between the offer and acceptance, the 'meeting place' was established according to which the offer is deemed to be valid for acceptance so long as the contracting parties continue their meeting.<sup>2</sup>

Traditionally, a contract can be validly formed when the parties are physically together in one place or, in the case of the parties being in different locations, they use a suitable means of communication to exchange the offer and acceptance, such as via a letter or messenger. When both parties are physically present the concept of 'meeting place' is easily determined but if the parties are physically distant at the time of forming the contract, questions arise as to whether the theory of 'meeting place' can be legitimately applied. Therefore, it is essential to initially discuss the application of 'meeting place' in face-to-face transactions and in contracts between absentee parties.

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<sup>1</sup> This article is based originally on an article, wrote by the researcher, titled as 'the Islamic Concept of Meeting Place and its Application in Electronic commerce' 2007 *Masaryk University Journal of Law and Technology*, vol. 1, no. 1, pp. 27-42.

<sup>2</sup> Al-Nawawi, Y. 2001, *al-Majmoo'a*, Dar Ehyaa' al-Torath al-Arabi, Beirut, vol. 9, p. 121

Technological developments present additional legal concerns to the 21st century contractor. Many modern day methods of communication enable a virtual instantaneous connection between parties through which the offer and the acceptance will come immediately to the knowledge of the other party. Yet, equally, some forms of communication may not be instantaneous and there can often be delays between the dissemination of the offer and its receipt. Consequently, debate ensues as to whether a contract formed via modern forms of communication can be comparable to a face-to-face transaction or rather as a contract made between parties in absentia. This article discusses the possible application of the concept of 'meeting place' in light of Internet-based transactions. It will establish whether an electronic contract can be validly formed according to the Islamic rules of 'meeting place'.

## 2. 'MEETING PLACE': DEFINITION

According to the modern jurist Sanhuri 'the theory of 'meeting place' is a unique Islamic idea which has been the focus of many Islamic jurists. In turn it has evoked many differences among them regarding its definition."<sup>3</sup> The concept of the contract's 'meeting place' is defined as the time during which the contracting parties engage to form a deal.<sup>4</sup> Based on this second definition, the valid formation of a contract based on the 'meeting place' demands that contracting parties be together in one place and engaged in their business discussion without any distractions unrelated to the deal.<sup>5</sup>

The concept of 'meeting place' was originally established to benefit both parties involved in the contract. Accordingly, the offeree enjoys a period of time (during the 'meeting place') to contemplate the worth of the offer without being required to make a hasty decision. The concept of 'meeting place' also provides the offeror with certainty as to whether or not there is an acceptance to be made and thus a contract is formed, before the parties separate from the 'meeting place'. When the offer is deemed to be legally valid for acceptance outside of a given timeframe, this may cause the offeror considerable difficulty in establishing whether or not an acceptance is going

<sup>3</sup> Al-Sanhouri, A. 1953, *Masader al-Haq fi al-Fiqh al-Esslami*, Dar al-Hana', Egypt, vol. 1, p. 90.

<sup>4</sup> Al-Zarqa, M. 2004, *al-Madkhal al-Fiqhi al-A'am*, Dar al-Qalem, Damascus, vol. 1, p. 432, and Al-Zarqa, M. 1961, *Sharh al-Qanoon al-Madani al-Soori*, Damascus University Press, Damascus, p. 133.

<sup>5</sup> Al-Shafiy, J. 2001, *Majless al-Aqd fi al-Fiqh al-Eslamy wa al-Qanoon al-Wadhei*, Dar al-Jamea'a al-Jadeedah, Alexandria, p. 154.

to be made.<sup>6</sup> To note, there is no application of the concept of 'meeting place' in Muslim commercial doctrine when parties agree to extend the validity of the offer to a certain time in which acceptance must be confirmed if the offeree wishes to form the contract. When there is no agreement, the Islamic idea of 'meeting place' is applied.

### 3. THE THEORY OF 'MEETING PLACE' IN CONTRACTING CASE INTER ABSENTEES

Traditionally, where both parties face each other at the time of forming the contract in one 'meeting place', the rules of 'meeting place' are straightforward. However, difficulties arise when the concept of 'meeting place' is applied in a contract formed between parties in different locations. Difficulties occur since the parties are not physically together and thus there is a time delay between the sending and receipt of communications between parties. Naturally, this delay does not occur in face-to-face transactions since both the offer and the acceptance are heard as soon as the contracting parties express them.

This type of contract is legally termed as contracting inter absentees. Contracting inter absentees is a contract which is formed between two contracting parties who are not gathered in one 'meeting place'.<sup>7</sup> Contracting inter absentees is deemed to be valid in light of Islamic rule.<sup>8</sup> In order to facilitate and simplify trading activities, the contract takes legal force, even if it is formed while the parties involved are not together in one 'meeting place'. If contracting with an absent party had not been permitted in the Muslim canon, this would have created serious difficulties for Muslim's engaging in commercial practice from distance.<sup>9</sup> An intermediary is employed to exchange the parties' consent to enter into a binding contract between absentees' parties. Traditionally, a messenger would have been engaged but in more recent times it is just as likely to be an electronic device, such as an email sent via the Internet.

As mentioned above, Islamic law only validates face-to-face transactions when the offer and acceptance is made in one 'meeting place'. However, in

<sup>6</sup> Zaidan, A. 1982, *al-Madkhal le Derasa al-Shariah al-Islamiya*, al-Resalah Institution, Beirut, pp 290-291, and Al-Ramlawi, M. 2006, *al-Ta'aqod be al-Wasa'el al-Mostahdatha fi al-Fiqh al-Esslami*, Dar al-Fekr al-Jama'ei, Alexandria, p. 131.

<sup>7</sup> Al-Joroshy, S. 2003, *Nadatiah al-Aqd we al-Khiyarat fi al-Figh al-Esslami al-Moqaran*, Gar Younes University Press, Benghazi, p. 64.

<sup>8</sup> Al-Shafiy, J., *Majless al-Aqd fi al-Figh al-Esslami wa al-Qanoon al-Wadhei*, op cit., p. 252.

<sup>9</sup> Ibid.

terms of applying the 'meeting place' in contracting inter absentees, a constructive 'meeting place' was established by analogy. The idea of a constructive 'meeting place' denotes the place where the offer came to the knowledge of the offeree.<sup>10</sup> That is to say, the constructive 'meeting place' is deemed to be effective when an offer comes to the knowledge of the offeree and lasts so long as the offeree physically remains in the same place as where the offer came to his knowledge. Accordingly, for the valid formation of contracting inter absentees, the offeree has to accept the offer in the exact place where the offer brought to his attention.<sup>11</sup> It does not mean that the offer has to be accepted immediately since the offeree may need sometime to ponder on the worth of the offer, but rather that the acceptance must be made before the offeree physically leaves the place where the offer was originally brought to his attention.<sup>12</sup>

Islamic jurists remain divided as to whether an offer in the form of a letter or relayed by messenger can be validly available for acceptance by re-reading or re-delivering of the message. According to one school of thought, in contracting inter absentees case, when the offeree physically leaves the 'meeting place' where the offer came to his knowledge without an acceptance being made, the offer is deemed to be rejected and thus the 'meeting place' cannot be set up again by the repetition of the oral message or the re-reading of the letter.<sup>13</sup> In the case of an offer being made via a trader's website this approach provides a legal barrier since website content is available 24/7 and a website visitor, accordingly, cannot revisit a web page to form a valid deal without an acceptance being made during the first visit. However, this point of view is not widely accepted in Islamic doctrine and the majority of Islamic jurists argue that the offer in contracting inter absentees can be re-read or re-delivered so long as the letter or the messenger is available whereupon the contract can be validly formed if an acceptance is made.<sup>14</sup>

<sup>10</sup> Al-Qarehdagy, A. 2002, *Mabda' al-Ridha fi al-Uquud*, 2d edn, Dar al-Bashair al-Eslamiyya, Beirut, vol. 2, p. 1093, and al-Ba'ali, A. 1989, *Dhawabed al-Uquud*, Wahbah Library, Cairo, p. 150.

<sup>11</sup> Musa, M. 1996, *al-Amwal wa Nadharryyat al-Aqd fi al-Figh al-Esslami*, Dar al-Fikr al-Arabi, Cairo, p. 237.

<sup>12</sup> Ibid, p. 236.

<sup>13</sup> Hamid, M. 1977, 'Mutual Assent in the Formation of Contracts in Islamic Law', *Journal of Islamic and Comparative Law*, vol. 7, p. 51.

<sup>14</sup> Al-Shafiy, J., *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cit., p. 257.

Nevertheless, from a practical point of view, an actual application of the rule of 'meeting place', as given above in Islamic law, in contracting inter absentees is questionable. For example, if a contract is formed using letters to exchange the offer and the acceptance, it is reasonable to expect that the content of a letter may take some time to be read and that the offeree may choose to read the item whilst walking or travelling. In turn, the application of the 'meeting place' becomes uncertain. Furthermore, the letter might be read whilst the receiver is alone and it then becomes difficult to determine where the offer letter is read and also whether the offeree physically leaves the place where the offer came to his knowledge as provided above.

Therefore, due to the difficulty in determining the idea of 'meeting place' in contract inter absentees, the practical application of 'meeting place' rule is questionable. Instead, an offer in contracting inter absentees should be valid for acceptance within a reasonable time. It is indicated that in contracts inter absentees, the offer remains valid until acceptance is given, for so long as is deemed proper according to the circumstances of the case. The period will take into account the due time taken for the communication to reach the offeree, for him to give it adequate consideration, and for his decision to reach the offeror. If the acceptance is not made within a reasonable time then the offer is considered as having lapsed.<sup>15</sup> Consequently, when a reasonable period of time passes without an acceptance being made, the offer is revoked and any subsequent acceptance treated as a new offer regardless of whether the offeree stays or departs from the place where the offer was originally brought to his attention. It is worth noting that in order to rule out any uncertainty regarding the availability of the offer in contract inter absentees, the offeror should clearly indicate a time limit for the validity of the offer to ensure that any acceptance made after that time does not have legal force and is deemed a new offer.

#### 4. THE ISLAMIC OPTION OF 'MEETING PLACE'

An essential rule of the concept of 'meeting place' is that each of the contracting parties has the right to cancel the contract after it is formed so long as the parties remain together at their 'meeting place'.<sup>16</sup> The question may

<sup>15</sup> Article 48 (1) and (2) of the Kuwaiti Civil Code (1980).

<sup>16</sup> Al-Qarehdagy, A., *Mabda' al-Ridha fi al-Uquud*, op cit., pp. 1091-1092, and Al-Joroshy, S., *Nadatiah al-Aqd wa al-Khiyarat fi al-Figh al-Esslamy al-Moqaran*, op cit., p. 162. Some Muslim jurists do not recognise the validity of the option in the law. For further discussion, please see, Al-Tayyar, A. (1997) *Khiyara al-Majles wa al-Aeeb fi al-Figh al-Eslami*, Dar al-Maseer, Riyadh, pp. 66-67.

arise in the light of electronic contract whether such option can be applied. This option takes its authority from a tradition attributed to the Prophet:

*When two persons enter into a transaction, each of them has the right to annul it so long as they are not separated and are together (at the place of transaction); or if one gives the other the right to annul the transaction. But if one gives the other the option, the transaction is made on this condition (i.e. one has the right to annul the transaction), it becomes binding. And if they are separated after they have made the bargain and none of them annulled it, even then the transaction is binding.*"<sup>17</sup>

It is held, accordingly, that the option of revoking the contract based on the parties' 'meeting place' is available to both of the contracting parties after a contract is formed and until the end of their 'meeting place'.<sup>18</sup> Arguably, this Prophetic Saying was clear in recognising the validity of the option of 'meeting place'. The word separation is defined as either one or both contracting parties physically leaving, not by word, the 'meeting place'. Therefore, when a contract comes into a legal existence by the correspondence of offer and acceptance, both of the contracting parties based on the option of 'meeting place', bear the right to validly terminate the contract without being liable for infringement, so long as they physically remain together at their 'meeting place'.

The option of 'meeting place' was established in Islamic commercial doctrine in the interests of the contracting parties. Parties may rush into deals without appropriate consideration and this option enables the parties to reassess the contract's worth, and thus annuls it, if they wish so, without facing legal liabilities. This option lasts only for a limited time period during the parties' 'meeting place'. It ends by the physical separation of the parties from the 'meeting place' and each of the parties can leave the 'meeting place' soon after the formation of the contract. Islamic jurists refer to prevailing trading practices and local customs when determining what constitutes physical separation. So, whenever it is customarily deemed that the contracting parties separate from the 'meeting place', and providing that none of them annuls the contract, at this moment the contract is legally considered to be irrevocably binding.<sup>19</sup> In addition, as the 'meeting place' was set forth for the benefit of the contracting parties, it should be considered

<sup>17</sup> Siddiqi, A. (trans) 2000, *Sahih Muslim*, Kitab Bhavan, New Delhi, p. 971.

<sup>18</sup> Ibn Qodama, A. 1999, *al-Moghni*, 4th edn, Dar A'alam al-Kotob, Riyadh, vol. 6, pp. 10-11.

that the contracting parties may choose to not apply the option of 'meeting place', if they wish so, by stating that on the contract's terms and conditions

However, in terms of applying the option of 'meeting place' in contracting inter absentees, the rules are less clear cut since the contracting parties are not together in one place so that the concept of 'meeting place' is plainly difficult to determine. The parties' right to annul a contract formed inter absentees as according to the option of 'meeting place' remains a matter of discussion in Islamic law. It is provided that, unlike in the case of face-to-face transaction, the option of 'meeting place' cannot be applied in contracting inter absentees.<sup>20</sup> The Prophet's saying above from which the idea of the option of 'meeting place' derives its authority presupposes that the parties are contracting in the presence of each other in one 'meeting place'. Thus, it is unrealistic to apply this rule in contracting inter absentees since the parties are in different locations.

In contrast, it was argued that the option of 'meeting place' is not so limited to merely face-to-face transactions, and suggested that as soon as an acceptance is made in a contract inter absentees, the offeree has the option to cancel the contract at any time before he physically leaves the place where he received the offer.<sup>21</sup> Likewise, the offeror can cancel the contract at any time as long as the offeree still stays in the same place where the offer came to his knowledge.<sup>22</sup>

However, from a practical point of view, the application of the option of 'meeting place' according to the latter legal approach appears to be difficult to establish in contracting inter absentees. It is unclear as to how the option of the 'meeting place' can possibly be determined where the parties are in absentia. Consequently, applying the option of 'meeting place' may lead to uncertainty and dispute in transactions formed inter absentees as it is impossible to establish when the offeree physically leaves the place where the offer was originally brought to his attention.<sup>23</sup> In addition, unlike in face-to-face transactions where the contracting parties may be tempted into rushing

<sup>19</sup> Various examples of when parties' parting or separation is taken place were set out. Amongst others, in a large market, parting is established by walking away until one does not hear the other's normal talk; and on a ship by going to different levels, and in a house by one leaving the house or going to a different room. See, Al-Joroshiy, S., *Nadatiah al-Aqd wa al-Khiyarat fi al-Figh al-Eslamy al-Moqaran*, op cit., pp. 161-162.

<sup>20</sup> Al-Shafiy, J., *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cit., p. 544.

<sup>21</sup> Al-Qarehdagy, A., *Mabda' al-Ridha fi al-Uquud*, op cit., p. 1093.

<sup>22</sup> Ibid.

<sup>23</sup> Rayner S. E. (1991) *the Theory of Contracts in Islamic Law*, Graham and Trotman, London, p. 112. See also, Dubai Contract Code (1971), article 7 (2).



into a contract, which highlights the necessity of the 'meeting place' to reconsider the value of the deal, a contract with absent parties is normally formed after thorough consideration by the involved parties. Thus, the need of the option of 'meeting place' in contracting inter absentees is absent.<sup>24</sup>

## 5. 'MEETING PLACE' IN WEBSITE CONTRACTS

It is matter of discussion whether transactions formed by electronic means are analogous to face-to-face transactions and therefore validate the rule of 'meeting place' or whether they should be considered as contracting inter absentees. One view indicates that although the contracting parties are geographically distant and not together in one place, the formation of contracts via the World Wide Web is comparable to face-to-face transactions.<sup>25</sup> Accordingly, like other forms of communication, including the telephone, the web can deliver instantaneous communication between parties.

Nevertheless, drawing parallels between transactions conducted over the telephone and transactions undertaken over the web does present some problems. In telephone communication, both parties communicate as they would in a face-to-face meeting, albeit over a handheld unit, without an intermediary. The conversation develops in real-time allowing them to immediately negotiate the deal, amend its terms, and, if they wish, reach an agreement. In contrast, the website is unable to negotiate contracts with customers, change its terms and conditions or do anything other than it was initially programmed to do by the website's trader. Hence, even though there might be instantaneous connection via the Internet, websites are usually pre-programmed to deal with customers without direct human involvement. As a result, there cannot be direct communication between the contracting parties in web transactions as analogous to that of face-to-face transaction. Therefore the application of the 'meeting place' concept is questionable in web transactions and thus it should be considered as contracting inter absentees.<sup>26</sup>

<sup>24</sup> Al-Shafiyi, J., *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cit., p. 545.

<sup>25</sup> Al-Fadhel, M. (1992) *al-Natharyyah al-A'mmah lel el-Tezam*, Dar al-Thaqafah, Amman, Jordan, vol. 1 pp. 136-137.

<sup>26</sup> It is worth noting that this approach is in line with the Ruling of Islamic Jurisprudence Assembly 1990 section (1), in which it was indicated, accordingly, that when there is a conclusion of contract between two absent parties, not gathered in one place, and one cannot see each other nor can hear his voice directly, and the tool of communication between the parties is either writing a letter, messenger, or similar to that telegraph, telex, fax, or computer screens, in all cases, the contract is deemed to be as contracting inter absentees.

## 6. 'MEETING PLACE' IN ELECTRONIC WRITTEN FORMS OF COMMUNICATION

In email transactions, communications of offer and acceptance between the parties may be subject to inherent delay. As a result the offer and acceptance cannot come to the knowledge of the contracting parties as soon as they are communicated.<sup>27</sup> Email messages can often be delayed for hours before arriving at its intended destination. Therefore, when this means of communication is used to form electronic contracts, it should be treated as contract inter absentees. This is due to the fact that a time delay occurs between the issuance of offer and acceptance and its arrival with the intended recipient. In effect, email draws parallels with traditional letter formats in contracting inter absentees. As in contracting inter absentees, the application of the concept of 'meeting place' in email transaction is questionable since it is impractical to determine the notion of the 'meeting place'.

Yet, when there is an instant communication between the contracting parties by writing, like that of telex and Internet chat rooms, some jurists consider such types of communication as face-to-face transactions because there is an instantaneous connection between the contracting parties, even though they are not together in one 'meeting place'.<sup>28</sup> It is argued that the essential difference between face-to-face transaction and contracting inter absentees is that there is a delay in communicating the offer and acceptance and its arrival with the intended recipient. While the typing of offer and acceptance in telex or Internet chat rooms is brought to the parties' knowledge instantaneously without any delay, they are considered as face-to-face connection.<sup>29</sup> Therefore, according to this legal approach, the 'meeting place' in a transaction formed via such written forms of communication deems to commence at the time that the offer reaches the offeree and lasts as long as the contracting parties engage with the transaction via such instant communication provided that there is no explicit or implicit rejection or withdrawal of the offer by one of the parties. The option of 'meeting place' can be applied in telex contract, by analogy, so long as both parties have not switched off their machine or signed out of the chat room.

<sup>27</sup> This approach is applied also on fax and telegram communications. Al-Adawi, M., *Nadhar-iiyyat al-Aqd fi al-Shariyya al-Esslamyya*, Modthakerat Ustanl Publisher, p. 18, cited in, Al-Ramlawi, M., *al-Ta'aoqd be al-Wasa'el al-Mostahdatha fi al-Fiqeh al-Esslami*, op cit., p. 141.

<sup>28</sup> Al-Ebraheem, M. (1986) *Hokom Ejra'a al-Oquud bewasa'el al-Etesalat al-Hadeetha*, Dar al-Dhiya, Jordan, p. 104. See also, the Judgment of Denning LJ in the case of *Entores Ltd v. Miles Far East Corporation* (1955) 2 All ER 493.

<sup>29</sup> Al-Ebraheem, M., *Hokom Ejra'a al-Oquud bewasa'el al-Etesalat al-Hadeetha*, op cit., p. 112.

Nonetheless, the consideration of such written forms as instantaneous communication should be reviewed and deemed as similar to contracting inter absentees. It is worth noting that based on defining 'instantaneous' as dependent on whether the sender knows immediately whether his communication comes completely and accurately to the knowledge of the purported receiver,<sup>30</sup> the sender in such written means of communication will be unaware if a failure occurs during the sending of messages or whether his communication arrives incomplete. It is accepted that in face-to-face contracts the offer and acceptance come to the knowledge of the parties, instantly, but this is not guaranteed in the case of a telex or Internet chat rooms contract. It is feasible that one of the parties may not be present behind the telex machine or the computer to instantly read the information relayed. In a similar vein, it is not uncommon for Internet connections to experience delays and even complete breakdown and this may cause the user of Internet chat rooms to experience delays or even complete loss of communication.

In the light of these factors, such forms of communication by writing should not be deemed as 'instantaneous'. Therefore, as with contracting inter absentees it is unlikely that the rules of 'meeting place' can be applied. In fact, it is impracticable to establish in telex and Internet chat rooms whether the parties remain engaged with the transaction or perhaps turn their attention to deal with something entirely unrelated to the transaction. It is also possible for the parties to temporarily leave a room without switching off the machine and remain logged onto a chat room whilst being elsewhere which is impossible to monitor. Furthermore, it is commercially unsound to stipulate that both parties can cancel the deal as long as the telex machine remains on and their status in the chat room remains active as these may be automatically set to stay on for hours and even days.

Hence, the formation of a contract via telex or Internet chat rooms should be assimilated to the exchanging of offer and acceptance via conventional posting of letters; thus, the 'meeting place' should be determined according to the rules provided for contracting inter absentees. In such contracts, the offer comes into effect when it reaches the offeree and lasts so long as it is deemed reasonable. Unless otherwise agreed, a reasonable length of time in contracting inter absentees can be determined by calculat-

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<sup>30</sup> *Chitty on Contract* (2008) thirtieth edition, Sweet and Maxwell, London, vol. 1, para. 2-050-2-051, pp. 171-172.

ing an adequate time period needed for the offer to reach the offeree and sufficient time for the offeree to evaluate the worthiness of the offer and give his acceptance, if he wishes so. Considering such written forms of communication as analogous to contracting inter absentees is consistent with the ruling of Islamic Jurisprudence Assembly 1990 in which it was indicated that the forming of contract by the use of telegraph, telex, and fax is legally deemed as contacting inter absentees.<sup>31</sup>

## 7. 'MEETING PLACE' IN VERBAL OR VIDEO-VERBAL MEANS OF COMMUNICATION

This section focuses on discussing whether the notion of 'meeting place' can be applied in telephone-based communication (similarly Internet-telephone communication). According to one juristic view, the use of Internet-telephone to form a commercial deal is legally regarded as the formation of a contract with one of the contracting parties absent from the 'meeting place'.<sup>32</sup> Accordingly, Internet-telephone communication is, by analogy, equated with the traditional communication between parties by a messenger. The messenger is a (human) tool deployed to transfer the intention of one of the contracting parties to form a deal with the other intended party. Likewise, the Internet-telephone is a (non-human) tool used to convey the intention of parties to enter into binding deal. As a result, the concept of 'meeting place' in such types of communication is considered according to the formation of contract inter absentees.<sup>33</sup> In a literal interpretation of the notion, it is provided that the application of the rules of 'meeting place' in face-to-face transaction presupposes that both of the contracting parties are physically together in one place, whereas, the parties in Internet-telephone communication are physically located in different places at the time of making the transaction.<sup>34</sup> Accordingly, the 'meeting place' is deemed to come to an end in conventional face-to-face transaction at the time when both or one of the parties leave, physically the 'meeting place', which is difficult to apply in telephone contract. Additionally, it is possible that the Internet-tele-

<sup>31</sup> See section (1) of the Ruling of Islamic Jurisprudence Assembly 1990.

<sup>32</sup> See, al-Shafiy, J., *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cit., p. 286, and Ewadhain, M., *Hal Yajoz al-Ta'aqod be al-Wasa'el al-Mostahdathah? al-Wa'e al-Eslamy Magazine*, 422: Dec 2000- Jan 2001, at 35.

<sup>33</sup> Al-Shafiy, J., *Majless al-Aqd fi al-Figh al-Eslamy wa al-Qanoon al-Wadhei*, op cit., p. 286

<sup>34</sup> In which it was indicated, according the Prophet Saying, that when two persons enter into a transaction, each of them has the right to annul it so long as they are not separated and are together (at the place of transaction .....)

phone connection is accidentally cut off; hence, the application of the option of 'meeting place' in 'Internet'-telephone communication as analogous to the 'meeting place' in traditional face-to-face transaction is questionable.<sup>35</sup>

Nevertheless, it is worth noting that the notion that both of the contacting parties must be physically together in one place is not a well-defined element for the application of 'meeting place' in face-to-face transaction. The contracting parties may validly form the contract while they are walking or travelling even though there is no particular place since the place of transaction keeps moving. As a result, any requirement that the parties must physically be together in one particular place in order to apply the rules of 'meeting place' in face-to-face transaction appears to be irrelevant. Furthermore, it should be mentioned that Internet-telephone based communication is different to the messenger tool in a number of ways. Critically, the contracting parties in Internet-telephone are instantaneously linked without an intermediary and thus hear each other's words as soon as they are expressed. Hence, the contract can be immediately negotiated and its terms altered to suit the parties' interest, whereas, the messenger lacks the authority to do anything but deliver what he was told to say.

Consequently, when Internet-telephone communication is used to form a contract, it should be legally deemed as analogous to face-to-face transaction based on the instantaneous communication between the contracting parties.<sup>36</sup> This is due to the fact that, similar to face-to-face transaction, the offer and acceptance should arrive to the knowledge of the parties without delay as soon as they are expressed through telephone conversation.<sup>37</sup> In live-video communication where the contracting parties can communicate and visually see each other simultaneously this should also be considered as analogous to face-to-face transaction.<sup>38</sup>

Therefore, in analogy to the notion of 'meeting place' in face-to-face transaction, the 'meeting place' is deemed to commence at the time the offer

<sup>35</sup> Ewadhain, M., *Hal Yajoz al-Ta'aqod be al-Wasa'el al-Mostahdathah?* op cit., pp. 35-36.

<sup>36</sup> Al-Oboodi, A. (1997) *Al-Ta'aqod a'an Dhareeq Wasa'el al-Ettesal al-Fori*, Dar al-Thaqaffah, Jordan, p. 146, and Al-Ebraheem, M., *Hokom Ejra'a al-Oquud bewasa'el al-Ettesalat al-Hadeetha*, op cit., p. 105. The same approach was adopted by most of the Arabic countries civil laws, to name some, article (95) of the Syrian Law, article (50) of the Kuwaiti Law, article (102) of the Jordan Civil Law, and article (94) of the Egyptian Civil Law, and see also the Ruling of Islamic Jurisprudence Assembly (1990), section (2).

<sup>37</sup> Al-Khaffaif, A. (1954) *Ahkam al-Mo'amalat al-Shariyyah*, al-Sonneh al-Mohammadiyyah Publisher, Cairo, p. 177, Isma'eel, M. D., *Nadhariyyat al-Aqd*, Dar al-Nahdah al-Arabiya, Egypt, p. 165, and Madkoor, M., *al-Wajeez lel-Madkhal fi al-Figh al-Eslamy*, Dar al-Nahdah al-Arabiya, Cairo, p. 264. See also, article 102 of the Jordan Civil Law.

<sup>38</sup> Al-Oboodi, A., *Al-Ta'aqod a'an Dhareeq Wasa'el al-Ettesal al-Fori*, op cit., p. 148.

is communicated via the telephone, and it should last so long as both of the parties continue their telephone conversation. As long as the Internet-telephone and live-video communication is deemed comparable to face-to-face transaction, the parties' right to annul the contract after it is formed should be applied. However, due to the difficulty in establishing the physical departure of the contracting parties from the 'meeting place' in Internet-telephone communication, a constructive termination can be suggested. Accordingly, the option of 'meeting place' in contract via instantaneous Internet-telephone communication should come to an end at the time of hanging up the telephone connection between the contracting parties. Furthermore, in live-video communication, where the parties can clearly identify one another, the option of 'meeting place' may come to an end, in analogy to face-to-face transaction, when one of the parties watches the other party physically leave the conferencing room even if their connection is not terminated. Yet, it is important to note that the availability of the option of 'meeting place' should not be interrupted in live-video communication when that party leaves the room to collect something related to the forming of contract.<sup>39</sup>

In this regard, the rationale behind the option of 'meeting place' in contract should be taken into consideration. Accordingly, such option provides both parties with more time to re-consider and re-evaluate the worth and benefit of the transaction. Thus, the legal requirement of physical departure from the 'meeting place' is just a means, introduced in Islamic law, to determine the point where the validity of this option comes to an end. Consequently, the option of 'meeting place' should always be available for contracting parties as long as it is possible to determine the time span of its validity and when it is likely to come to an end. As a result, in analogy to the physical departure of the parties from the 'meeting place', the option of 'meeting place' in Internet-telephone contract should draw to an end when the telephone communication is terminated.

In terms of the possibility that the Internet-telephone gets accidentally disconnected due to a technical fault, a parallel can be drawn to the sudden interruption of 'meeting place' in traditional face-to-face transactions, by for instance, a flood, earthquake or a dangerous animal attacking the parties, which causes the unintentional physical separation of the contracting

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<sup>39</sup> Al-Qarehdagy, A. (2000) *Hokom Ejra al-A'qood be A'alat al-Ettesal al-Hadeetha, Majallat Majam'a al-Figh al-Esslamy*, 2 (6): at 941.

parties from the 'meeting place'. It is provided in such circumstances, that when both of the contracting parties meet again, they can resume their 'meeting place' and thus practice the option of 'meeting place'.<sup>40</sup> The same practice would be applied when a technical fault leads to a sudden termination to the Internet-telephone communication between the parties. The constructive 'meeting place' should remain unaffected as the parties can re-initiate another communication and resume their 'meeting place'.

## 8. CONCLUSION

The analysis provided in this article focuses on the Islamic rules of 'meeting place' and their application in electronic contracts. Accordingly, the concept of 'meeting place' is a mean, introduced to provide a balanced benefit to both of the contracting parties, during which the offer and acceptance must be expressed for a contract to be valid under Islamic law. That is to say, the contracting parties can choose to not apply the concept of 'meeting place' if they wish to do so, by extending the validity of offer for a certain time, irrespective of whether the parties remain in their 'meeting place' or not.

Due to the difficulty in determining the concept of 'meeting place' in contracting inter absentees it is questionable if the rules of 'meeting place' can be applied. As a result, when an offer is communicated to an absent party it should be valid for acceptance within a reasonable timeframe so that the contract cannot be validly formed if the acceptance is communicated after that time period is exceeded.

It is unclear whether the rules of 'meeting place' can be applied in e-commerce. With regards to web transactions, although it may be said that there is instantaneous communication between the parties, it should not be ruled as comparable to face-to-face or telephone transaction. Thus, the rules of 'meeting place' should have no application in web transactions. Similarly, there is a delay between the communication of offer and the acceptance and its arrival at the intended recipient in email transactions. Therefore, the rules of 'meeting place' in email transactions cannot be applied.

Despite the fact that the parties are not together in one place in telephone contracts, the rationale idea behind the introduction of 'meeting place' should be considered whenever its application is possible and does not cause difficulty. Therefore, a contract formed via telephone is deemed to be as comparable to a contract formed between parties in face-to-face. Likewise

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<sup>40</sup> Ibid.

with face-to-face transaction, the communication of the offer and acceptance in telephone contract should come to the knowledge of the parties as soon as they are expressed. That is to say, the 'meeting place' in a telephone contract refers to the time during which the parties are connected together via the telephone communication. Accordingly, the parties' right to annul the contract after it is formed by the communication of offer and acceptance is deemed to come to an end when the telephone connection is terminated. This is an analogous approach to the parties' physical separation from the 'meeting place' in face-to-face contract.

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